

African Continental Free Trade Area (AfCFTA)

FAQs



QUESTIONS AND ANSWERS

No. 1
2018

What is the AfCFTA?¹

The AfCFTA, once complete, will be a continent-wide free trade area for those states which have deposited instruments of ratification. It is called a 'Free Trade Area' but will be more akin to a comprehensive partnership agreement because the disciplines will go beyond trade in goods to over services, investment, competition and intellectual property.

The main objectives of the AfCFTA are to create a single continental market for goods and services, with free movement of business persons and investments, and thus pave the way for accelerating the establishment of a continental customs union. It will also expand intra-African trade through better harmonization and coordination of trade liberalization and facilitation and instruments across the RECs and across Africa in general. The AfCFTA is also expected to enhance competitiveness at the industry and enterprise level through exploitation of opportunities for scale production, continental market access and better allocation of resources.

The overarching aims of the agreement with respect to goods are:

- progressive elimination of tariffs
- progressive elimination of non-tariff barriers
- enhancing the efficiency of customs, trade facilitation and transit
- cooperation on technical barriers to trade and sanitary and phytosanitary
- development and promotion of regional and continental value chains
- socio-economic development, diversification and industrialisation across Africa.

¹ This document is based on tralac's understanding of the legal texts and modalities as of 1 June 2018. Updated on 12 March 2019.

The overarching aims of the agreement with respect to services are:

- enhance competitiveness of services
- promote sustainable development
- foster investment
- accelerate efforts on industrial development to promote the development of regional value chains
- progressively liberalise trade in services

Who signed what?

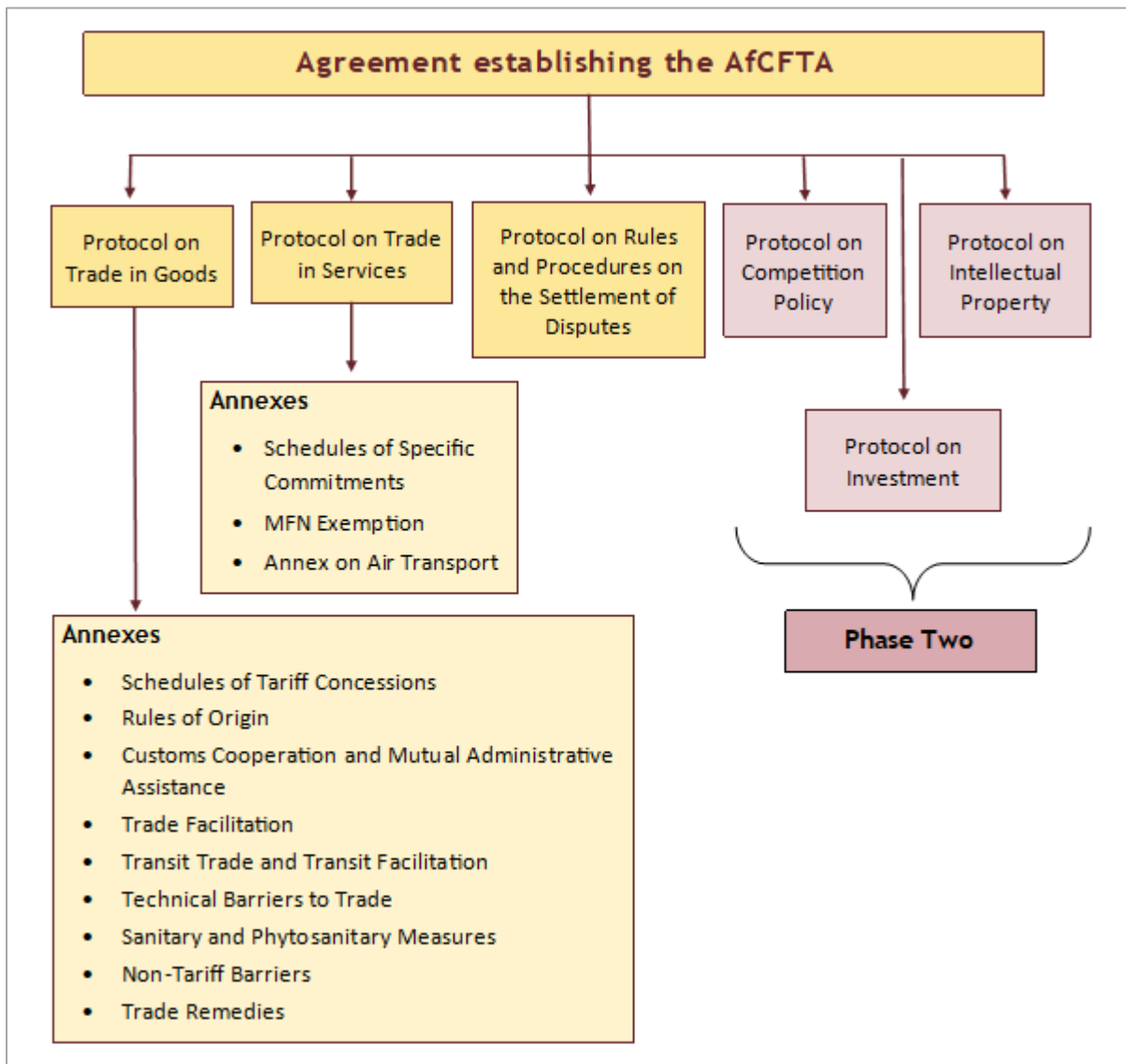
At the Kigali Summit (21 March 2018), one AfCFTA document was open for signature – the consolidated text of the AfCFTA including – the *Agreement establishing the AfCFTA*, the Protocol on Trade in Goods, the Protocol on Trade in Services and the Protocol on Rules and Procedures on the Settlement of Disputes (download the legally-scrubbed version [here](#)).

In total, 44 out of the 55 AU Member States signed the consolidated text of the AfCFTA Agreement at the Summit – see the full list [here](#). Notable absences were South Africa – and other SACU members, except eSwatini (Swaziland) – and Nigeria. However, five additional signatures were added at the 31st African Union Summit on 1 July 2018 in Nouakchott, Mauritania, namely by South Africa, Sierra Leone, Lesotho, Burundi, and Namibia. Nigeria is currently engaged in impact and readiness assessment for the AfCFTA following a 7-month nation-wide sensitisation and consultation exercise to assess the potential risks and benefits of signing the Agreement. To date, 52 countries have signed the AfCFTA Agreement – only Eritrea, Nigeria and Tanzania have yet to sign.

The AfCFTA Agreement is the umbrella instrument. Along with the Protocols included in Phase I, Phase II will see Protocols on Intellectual Property Rights; Investment and Competition negotiated and concluded.

The Annexes to the Phase I Protocols on goods, services and dispute settlement form an integral part of the AfCFTA Agreement. The Architecture of the AfCFTA, showing the Phase 1 Protocols with their respective Annexes, and the Phase II Protocols, still to be negotiated, is presented below.

Two other documents were also open for signature at the Kigali Summit: the Kigali Declaration and the Protocol on Movement of Persons. While the *Kigali Declaration on the establishment of the African Continental Free Trade Area* (available [here](#)) indicates a commitment to the AfCFTA and its principles, the *Protocol on Movement of Persons*, though not a part of the suite of AfCFTA instruments, forms an essential component of the AU's vision of attaining a single African market in which goods, services and persons are able to move freely across national borders.



The *Protocol to the Treaty establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment* (available [here](#)) was negotiated under the auspices of the AU, and had been *adopted* by the 30th Session of the AU Assembly on 29 January 2018. Movement of persons is an essential component of a free trade area and so this Protocol is a relevant legal instrument for the AfCFTA. However, exactly how it will impact on the AfCFTA is not yet clear. It will depend on the identity of the Parties which have ratified the Protocol on the Movement of Persons as well as the provisions in the AfCFTA instruments on the movement of persons.

What happens next?

The decision on the AfCFTA sets out an ambitious timeline for further negotiations, however, this may be amended by the Member States.

According to the Decision on the AfCFTA, the completed Annexes to the Protocol on Trade in Goods, Annexes to the Protocol on the Rules and Procedures on the Settlement of Disputes, and the List of

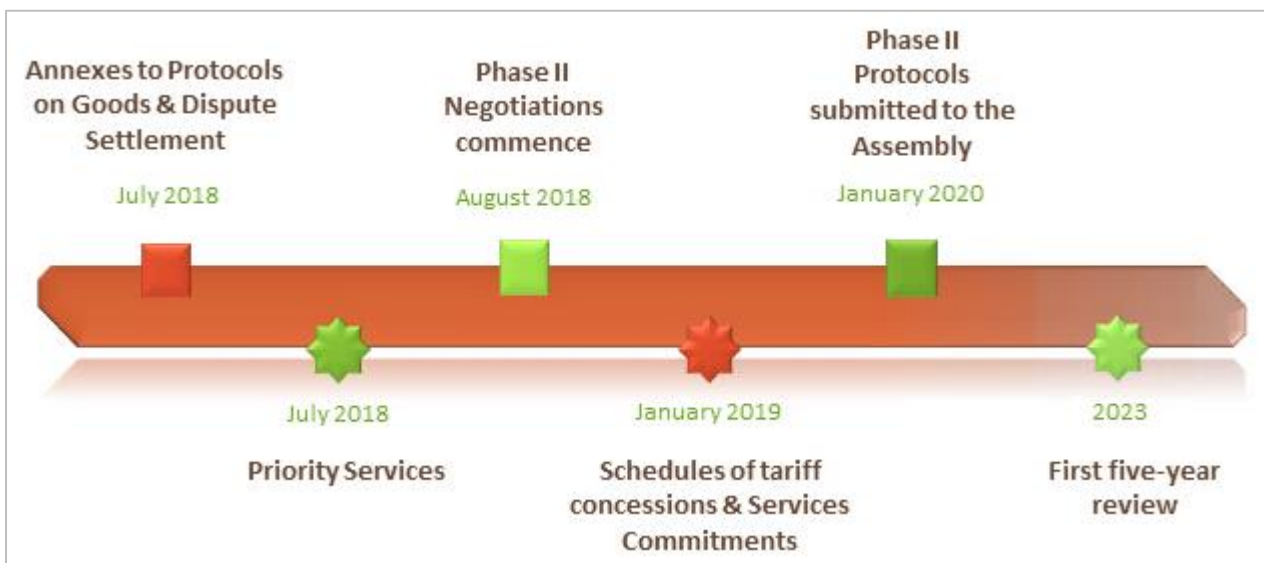
Priority Sectors on Trade in Services should be submitted to the July 2018 session of the AU assembly for adoption. The 5 agreed priority services sectors are transport, communications, tourism, financial, and business services. Negotiations on rules of origin are still to be finalised.

The Decision of the AU Assembly also provides that Schedules of Tariff Concessions, and Schedules of Specific Commitments on Trade in Services should be submitted in January 2019.

The second phase of negotiations is scheduled to commence in August 2018 to negotiate protocols on Investment, Competition and Intellectual Property. The AU Assembly decision requires these protocols to be submitted to the January 2020 session for adoption.

The African Union will establish a Secretariat for the AfCFTA. Timing for this has not been articulated, but some countries are said to be bidding to host the Secretariat.

Given the commitment to progressive liberalization, even after the agreement enters into force, Member States will continue to negotiate, for example on further tariff reductions or services liberalisation, and review areas such as those classified as excluded products. The entire agreement is also subject to 5-yearly review.

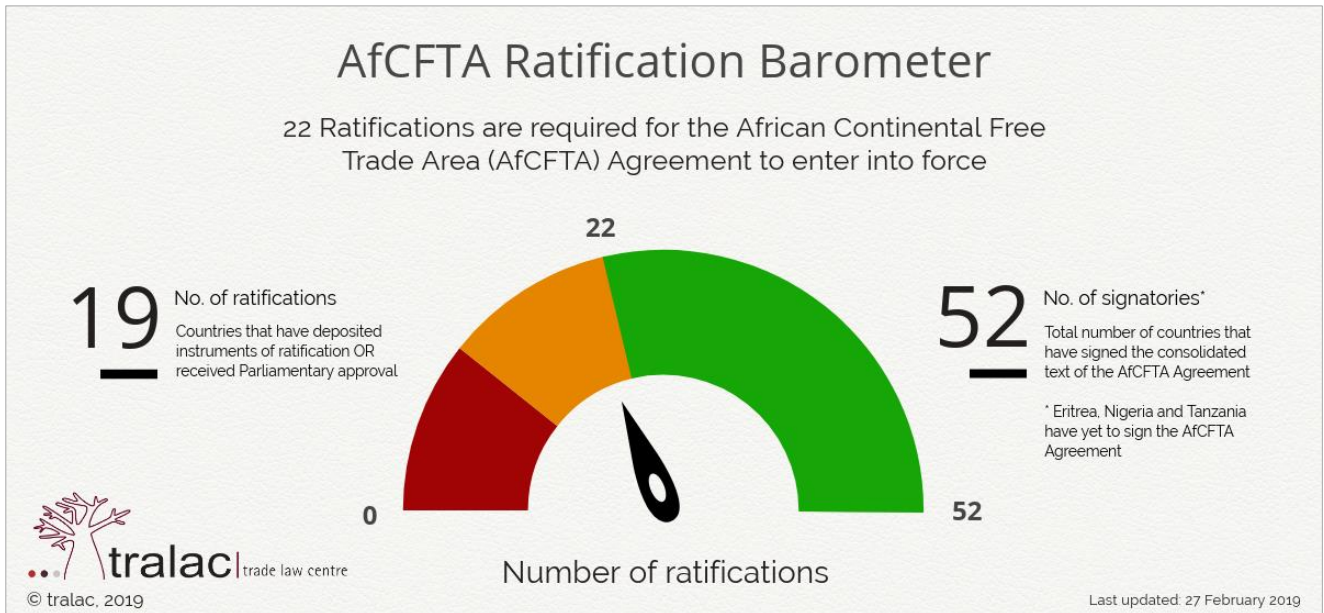


When does it become real?

The AfCFTA will come into force for those Member States that have ratified the agreement, 30 days after the 22nd ratification has been deposited at the African Union Commission, which is designated as the depository for this purpose. Some states have deposited instruments of ratification already. Other AU Member States may accede to the Agreement after it comes into force.

As at 27 February 2019, 15 countries have deposited their instruments of AfCFTA ratification with the Chairperson of the African Union Commission – Ghana, Kenya, Rwanda, Niger, Chad, Congo Republic, Djibouti, Guinea, eSwatini (formerly Swaziland), Mali, Mauritania, Namibia, South Africa, Uganda, Ivory

Coast (Côte d’Ivoire) – and an additional 4 countries have received parliamentary approval for ratification – namely Sierra Leone, Senegal, Togo, and Egypt. The total number of ratifications (approved and deposited) now stands at 19.



To download the full infographic, [click here](#).

The Phase II Protocols on Investment, Intellectual Property Rights, Competition Policy require their own instruments of ratification.

How will tariff concessions be negotiated?

Based on tralac’s understanding of the negotiation modalities, the negotiations will aim to progressively reduce and eliminate customs duties and non-tariff barriers on goods. At this stage the goal is for 90% of tariff lines to have a zero duty within 5 years (or 10 years for LDCs).

A special dispensation for 7 LDCs has also been tabled; providing for a reduced ambition for specific LDCs. Djibouti, Ethiopia, Madagascar, Malawi, Sudan, Zambia, and Zimbabwe will be expected, in terms of this dispensation, to meet a reduced level of ambition of 85% of tariffs at entry into force of the AfCFTA, with a 15-year period to reach 90%.

We expect that negotiations will be conducted bilaterally (member-state/customs territory to member-state/customs territory).

The modalities also provide for members to negotiate on sensitive products, on a request and offer basis, on which tariffs would reduce to zero over a longer period – 10 years for non-LDCs and 13 years for LDCs. The sensitive products and their schedules of tariff reductions may be different in each bilateral relationship.

In addition, the modalities provide for an exclusion list, products on which no reduction in tariffs would be proposed. This will also be negotiated on a request and offer basis – so one exclusion list for each bilateral relationship within the AfCFTA – and will be subject to review every five years.

The exclusion list is subject to an ‘anti-concentration’ clause. This is to ensure that members are not able to include entire sectors in their exclusion lists.

Trade within RECs will continue according to the trading regimes they have in place (customs unions or free trade areas). New tariff liberalisation under AfCFTA will only occur among Member States that do not have an existing agreement with one another. For example, SACU Member States do not have any existing preferential trade arrangements with ECOWAS Member States, so tariff concessions need to be determined. The AfCFTA does provide for the eventual establishment of a continental customs union, but this is a long way off.

What rules of origin will apply?

The primary goal of rules of origin is to prevent trans-shipment – that is, goods from a non-preferential country being imported at preferential rates of duty.

Within the continent, the various RECs have different approaches to rules of origin. For example, COMESA has a general rule of 35% value addition, while SADC also has product specific rules of origin. These REC rules of origin will stay in place for these trading areas.

It is not yet clear what rules of origin will be in place under the AfCFTA Rules of Origin Annex, however it is expected to take a mixed approach, with both a general rule and product specific rules in sensitive categories.

Compliance with rules of origin will be necessary to access preferential tariffs under the AfCFTA. This has important implications. An example of this is in SADC, where a rule of origin for wheat flour, has not been agreed, and trade continues under MFN rates.

What happens to the RECs and other trading arrangements?

Trading under the RECs

The Regional Economic Communities (RECs) will not disappear for the foreseeable future. Member states will continue to trade under their respective REC trading regimes.

In the AfCFTA Agreement the Member States reaffirm their existing rights and obligations under other trade agreements of which they are members. Similarly, two of the principles outlined in Article 5 refer to the ‘RECs’ Free Trade Areas as building bloc[k]s for the AfCFTA and that best practices in the RECs are recognised. Another Principle mentions the “preservation of the *acquis*”, which means that what has already been achieved as part of the implementation of REC obligations will have to be respected.

Article 19 of the AfCFTA Agreement states that ‘State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this agreement, shall maintain such higher levels among themselves.’ A similar formulation is used in the goods protocol with respect to the elimination of customs duties and trade barriers – suggesting that REC members shall maintain higher levels of liberalisation and where possible improve upon them among themselves.

Other trade arrangements

Negotiations on the Tripartite Free Trade Area (TFTA) are ongoing. It should be noted that SACU and the EAC are already negotiating tariff reductions under the TFTA. This poses another question: How the CFTA and the TFTA (which has a smaller number of Members) will relate to each other.

It is not clear at this stage if or when stage two of the TFTA negotiations (intended to cover services, investment and competition) will take place.

Overlapping membership

One of the objectives of the Agreement (Article 3) is to: ‘[r]esolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

However, the indications in the Agreement are that the aim of resolving the challenges of multiple and overlapping memberships will be superseded by the aim of preserving the RECs and their *acquis*.

Services seems a little more promising, with Article 18 of the Trade in Services Protocol suggesting that sector specific obligations via regulatory frameworks should take into account ‘the best practices and *acquis* of the RECs...’

How will services negotiations work?

Member States have been tasked with deciding on priority sectors by July 2018, however, services modalities are not yet finalised. AfCFTA members are expected to identify nine priority sectors that will be subject to liberalisation.

We expect that Member States will then either negotiate bilaterally on these service sectors by requesting and offering market access in the four modes for each of these priority sectors according to their particular relationships; or schedule commitments that apply to all Member States under the priority sectors. Member States may also make horizontal commitments. The resulting services Schedules of Commitments must include any conditions on the liberalisation.

According to the text of the Protocol on Services, members will also engage in regulatory cooperation and develop sectoral disciplines, based on best practice in the RECs.

What is Phase II?

Phase II covers Investment, Competition and Intellectual property.

Negotiations on these protocols were expected to commence in August 2018.

The specific objectives of the Agreement refer to *cooperation* on investment, intellectual property rights and competition policy. Thus, we might expect these protocols to be unambitious in terms of specific and binding commitments.

How does AfCFTA fit with other continental initiatives?

The AfCFTA, along with the free movement of persons and the single air transport market, is a flagship component of the broader Agenda 2063 program – the African Union’s framework for structural transformation and development. The African Union’s initiatives to Boost Intra-Africa Trade, the Programmes for Infrastructure Development for Africa and Accelerated Industrial Development for Africa are essential to realise the benefits of the AfCFTA.
